

March 13, 2014

Kirk Uhler  
Placer County Supervisor  
1700 Eureka Rd., #150A  
Roseville, CA 95661

Re: Your Request for Advice  
**Our File No. A-14-026**

Dear Mr. Uhler:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Our analysis is based solely on the question presented. This letter does not address the Act's conflict of interest provisions, which may disqualify you from certain governmental decisions based upon any economic interests in your consulting business and clients of the business. Moreover, this advice is limited to the provisions of the Act.

### **QUESTION**

May you use campaign funds to pay for the defense against a cross complaint alleging that you failed to perform your duties under a private employment contract because of your time-commitment as a county supervisor?

### **CONCLUSION**

You may not use campaign funds to defend against the cross complaint because the complaint arises out of your private employment and not out of your activities, duties, or status as a candidate or elected official.

### **FACTS**

You are in your twelfth year as an elected County Supervisor in Placer County. For the past five years, you have also been self-employed, providing business development and government relations services to various clients on a contractual basis.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Approximately one year ago, you brought suit against a former client who owes you a substantial amount of money for two and a half years of your services. As a part of your former client's defense against your claim, the client has filed a cross complaint against you for fraud and misrepresentation, which centers on the client's allegation that your time commitment to the Placer County Board of Supervisors kept you from performing your duties under the private contract. You state that the client's counter claim "publically defames" you.

### ANALYSIS

With regard to the use of campaign funds, Section 89510 provides that "[a]ll contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office." Section 89512 states:

"An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative or governmental purpose."

Generally, the Act's provisions restricting the "personal use" of campaign funds are designed to prevent candidates, elected officials, and others who control the expenditures of campaign funds from benefiting privately from their campaign activities. While an expenditure of campaign funds must be reasonably related to a political, legislative or governmental purpose, the expenditure must be *directly* related to a political, legislative, or governmental purpose if the expenditure confers a "substantial personal benefit"<sup>2</sup> on any individual or individuals with authority to approve the expenditure. (Section 89512.)

In regard to attorney's fees and costs in connection with litigation, Section 89514 further provides:

"Expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action to enjoin defamation, defense of an action brought for a violation of state or local

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<sup>2</sup> Section 89511(b)(3) defines "substantial personal benefit" as an expenditure of campaign funds that results in a direct personal benefit with a value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

campaign, disclosure, or election laws, and an action arising from an election contest or recount.”

Based upon the facts you have provided, you have filed a claim for failure to pay on a private consulting contract, and you former client has filed a cross complaint for fraud and misrepresentation arising out of the contract. Accordingly, this particular matter arises from a contractual dispute resulting from your private employment and not out of your activities, duties, or status as a candidate or elected official. While you have asserted that you former client has “publically defamed” you in the cross complaint, this assertion does not change our determination as the litigation in question is not an action to enjoin defamation and you are not defending yourself against an action for defamation.<sup>3</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl

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<sup>3</sup> Note that even in an action initiated to enjoin defamation, the use of campaign funds may be limited to those related to the injunction. For example, we have previously advised that campaign funds could not be used to seek monetary damages in action to enjoin defamation. (See *Richter* Advice Letter, No. I-93-355, *Lively* Advice Letter, No. A-91-241, and *Williams* Advice Letter, No. A-91-500.)

# LEGAL DIVISION ASSIGNMENT SHEET

Tracking Number:	14026
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ITEM DESCRIPTION			
Advice Letter No.	14-026	Requestor	Uhler, Kirk
Regulation Project No.			
Other (describe)			

Received By FPPC On:	02/14/14	Due Date:	03/18/14
Assigned To:	Brian	Date To Assignee:	02/14/14
Date sent to AG/DA (if 1090)		Date AG/DA respond, if any.e	

REVIEWERS	Date To Review	1st Approval & Date (Including Regulation Notices)	Date To Review	Final Approval & Date (Incl. Regulation Adoption Memos)
Proofed				
Senior	3/12/14	3/12/14 HPW		
TAD Chief (SEI, Campaign, Conflict of Interest Code letters)				
Assistant GC		JWW		
General Counsel				
Executive Director (discretion of GC)				
Chair (discretion of GC)				